IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/11/2003

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN
and
THE HONORUABLE MR.JUSTICE AR.RAMALINGAM

A.S.400 of 1989

Kalidoss Pillai ... Appellant

-Vs-

1. Palani Subban Pillai(died)
2. Arunachalam Pillai (died)
3. Sivananda Desigar

4. The Manager,
Indian Overseas bank,
Thirunallar.

5. The Manager,
Food Corporation of India,
Thirunallar.

6. Muthu Krishna Iyer
7. Selvaraj
8. Padmavathi
9. Ranjitkumar Satyadoss
10.Mrinalini
11.Salakshmi
12.Saradamani
13.Pushpakanthi
14.Thirumuruga Doss
15.Mrs.A.Rajeswari
16.Mr.A.Natarajan
17.Mrs.Vasanthi
18.Mrs. Saroja
19.Mr.A.Sivarajan
20.Mrs.Manoranjitham
21.Mr.Karthikeyan @ Jayabal
22.Mrs.Mallika ..... Respondents 8 to 14 are L.Rs. of
the deceased first respondent.

Respondents 15 to 22 are L.Rs. of

the deceased second respondent.
... Respondents.

Appeal filed against the judgment and decree in O.S.No.9 of
1988 on the file of the Additional District Judge of Pondicherry at Karaikkal,
dated 6.1.1989.

!For appellant : Mr.K.Yamunan

^For respondents: Mr.T.R.Rajagopalan, Sr.counsel for
Mr.S.Rajagopalan, for R8 to 14
Mr.K.Chandramouli, Sr.counsel for
Mr.S.Viswanathan for R15 to 22

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

This is an appeal by the second defendant in the suit. The
suit has been filed for partition. The suit was originally instituted on the
file of Subordinate Judge's Court, Karaikkal in O.S.No.30 of 1977 and later
transferred to the file of Additional District Judge of Pondicherry at
Karaikkal. The plaintiff and defendants 1 and 2 are brothers. During the
pendency of the suit before the learned Subordinate Judge, Karaikkal, it was
represented by the second defendant that there was a compromise and hence, he
filed an application to pass a decree in terms of the compromise entered into
among the plaintiff and defendants 1 and 2 in the presence of mediators. The
plaintiff, however, contended that there was no division and he never singed
the memorandum of compromise. Learned Subordinate Judge, after enquiry found
that there was a compromise which was reduced into writing and signed by the
parties and accordingly, he passed a preliminary decree in terms of the
compromise.

2. The preliminary decree passed by the learned Subordinate
Judge was the subject matter of appeal before this Court in A.S.Nos.488 and
731 of 1980. Those appeals were heard along with C.R.P.Nos.1299 and 2 581 of
1980, and this Court, by judgment dated 23.9.1987, held that the conclusion of
the learned Subordinate Judge that there was a concluded compromise among the
parties which was reduced into writing could not stand and in this view of the
matter, the judgment and decree of the trial Court was set aside and the
matter was remitted to the Subordinate Judge's Court, Karaikkal for fresh
consideration.

3. The suit was transferred to the Court of Additional
District Judge, Pondicherry at Karaikkal and renumbered as O.S.No.9 of 1988.
Learned Additional District Judge has passed a preliminary decree holding that
the plaintiff and defendants 1 and 2 would be entitled to 1/3 rd share each in
A-schedule properties described in the plaint and in item No.1 of B-schedule
and in the movable properties described under schedule C-1 of the written

statement. Learned Additional District Judge also held that the plaintiff and defendants 1 and 2 are not entitled to any share in the properties described as C-schedule of the plaint and in the house No.36, Thirunallar Road as they are the exclusive properties of the first defendant. Learned Additional District Judge also held that neither the first defendant,nor the second defendant could claim any share in the properties given to the plaintiff under Ex.A-10. It is against the judgment and preliminary decree passed by the learned Additional District Judge, Pondicherry at Karaikkal, the present appeal has been preferred by the second defendant.

4. Neither the plaintiff, nor the first defendant has filed any appeal, but the second respondent has filed this appeal against the judgment and decree of the learned Additional District Judge holding that the properties set out in the written statement of the defendants 1 and 2 are individual properties of the plaintiff and the defendants 1 and 2 cannot claim any share in the properties. The second defendant has also appealed against the decree holding that the properties standing in the name of the first defendant are absolute properties of the first defendant. His main case is that the rejection of the claim of a share made by the second respondent in respect of the properties set out in the schedule to the written statement is not correct.

5. In our view, it is not necessary to set out the averments made in the plaint in detail, but the necessary facts for the disposal of the appeal are as under:- One Vaithilingam Pillai had three sons the plaintiff being the eldest son and the defendants 1 and 2 are his second and third sons. Vaithilingam Pillai was residing at Thirunallar in Pondicherry. The case of the plaintiff, as seen from the plaint, is that the plaintiff and the defendants 1 and 2 were cultivating lands by joint exertion and they took lands from several persons on lease and out of the income earned by way of joint exertion, they jointly purchased immovable properties from time to time in the joint names of the plaintiff and the defendants 1 and 2. The plaintiff has described those properties as item Nos.1 to 6 in A-schedule to the plaint. They also purchased a tractor with trailor and an oil engine the details of which are given in B-schedule to the plaint. The plaintiff and the defendants 1 and 2 had another brother, by name, Appasamy and he died when he was young at the age of 18. The plaintiff's paternal aunt Sivapakkiathammal gave some cash to the first defendant and Appasamy and Vaithilingam Pillai purchased certain lands in the names of the first defendant and Appasamy which are described in Cschedule to the plaint and it is claimed that since Appasamy died intestate without leaving any heir, the plaintiff would be entitled to 1/3rd share in the 1/2 share owned by Appasamy in C-schedule properties. In the plaint, the plaintiff has set out the details regarding certain misunderstanding that arose between the brothers. The plaintiff has stated that the first defendant was liable to pay for the value of the paddy harvested for the year 1976-77. It is also stated that the first defendant sold a portion of the properties in C-schedule to the third defendant in the suit who is entitled to equitable relief. Other defendants 4 to 7 are not concerned with the properties, but they have been impleaded on the ground that they are occupying the properties. The suit has been filed on the ground that the plaintiff and the defendants 1 and 2 are joint owners of the suit properties and they are in joint possession and hence, the plaintiff claimed

the relief of partition and also for a direction to the first defendant to pay the value of the paddy harvested in the year 1976-77 and for other reliefs.

6. The first defendant has filed a written statement. According to him, apart from the plaintiff and the defendants 1 and 2, there was another brother, by name, Paramasivam Pillai and he was living separately during the life time of Vaithilingam Pillai. According to the first defendant, the allegation in the plaint that the plaintiff and the defendants 1 and 2 formed members of the joint family and by their joint exertion, they cultivated the lands and they purchased the properties is false. His case was that they had an ancestral house in the village and the nucleus of the joint family was the earnings of the father and the mother of the parties and the children were educated. According to him, the first defendant took lands on lease from lessors. it is stated that he was a local M.L.A. and the plaintiff has deliberately omitted to mention some of the properties belonging to the joint family. The first defendant included in the written statement certain properties which were not included in the plaint. It is stated in the written statement that four items of the properties mentioned in the settlement deeds made by the plaintiff in favour of his sons, daughter and grandson are all joint family properties and the house was built even during the life of his father. His case was that other properties were acquired mainly from the income of the first defendant who earned income as a contractor and also as a lessee of the lands. It is also stated that C-schedule properties are concerned, they are also to be included in the joint family properties and all the members are entitled to 1/3rd share. His main case was that the plaintiff has omitted to include certain items of the joint family properties and the first defendant has given the details of those properties along with the written statement.

7. A reply statement was filed by the plaintiff on 12.3.1978 wherein the plaintiff has taken a plea that the plaintiff's maternal grandmother, Raja Kannu Achi executed a testament deed constituting the plaintiff as her universal legatee and bequeathed substantial portion of her properties to the plaintiff. According to him, whatever properties which he got otherwise than by his own exertion were only from his maternal grandmother and the same could not part-take the character of joint family properties. According to him, the second defendant was not given any property, but, on the other hand, his paternal aunt, Sivapakiathammal settled certain properties in favour of the first defendant and his deceased brother, Appasamy and those properties were individual properties of the respective parties. His case is that the parties never intended to mingle or pool the properties which they got from their female ancestors. He has denied the averment that the properties were joint family properties.

8. In response to the reply statement, an additional written statement was also filed by the first defendant on 26.7.1978.

9. It is also necessary to refer to the written statement of the second defendant who is the appellant herein. His case is that the plaintiff has not included all the properties belonging to the family. He has stated that the plaintiff was a municipal employee with a meagre salary of

Rs.40/- per month. It is stated that out of the joint efforts several properties, which the plaintiff omitted to mention, were purchased in the names of the plaintiff and the first defendant. It is also stated that the house in which the plaintiff and the defendants 1 and 2 were living was constructed during the life time of their father and a lodging house and a pucca building in which Indian Overseas Bank Thirunallar is housed which was was constructed in 1963
has also been omitted. He has also given the list of properties standing in the names of the plaintiff and the first defendant which belong to the joint family and they should be included along with other family properties for partition.

10. The trial Court, on the above pleadings, framed as many as fifteen issues. Learned Additional District Judge, Pondicherry at Karaikkal held that in so far as the Union of Pondicherry is concerned, the Hindu Joint family system was not in vogue, but the system of ' Regime do la Co-proprieate Families' is in existence and the plaintiff and the defendants 1 and 2 are not the members of the joint family. He also held that the documents produced by the plaintiff in Exs.A-1 to A-6 showed that the plaint schedule properties are jointly owned properties of the plaintiff and the defendants 1 and 2. Learned trial Judge also relied upon Ex.A-10 and held that the plaintiff got properties under Ex.A-10 from his maternal grandmother Raja Kannu Achi and the defendants had no right over those properties. He also held that the plaintiff is the absolute owner of the properties covered in Ex.A-10 and neither the first defendant, nor the second defendant had any right in those properties. Learned Judge also found that the first defendant acquired certain properties in his name. So also, the second defendant who is the appellant herein acquired certain properties in his name and the plaintiff and the first defendant were alone the earning members and the second defendant was young boy at the time of acquisition. He also found that there were no ancestral properties and the father of the plaintiff and defendants 1 and 2 died in the year 1941 and there is no evidence to show that the plaintiff acquired the properties in his name from and out of the income of the joint family properties. Learned Judge also found that the paternal aunt Sivapakiathammal had settled certain properties in favour of the first defendant and his brother Appasamy and came to the conclusion that there were no ancestral properties from which the members acquired the properties individually. He therefore held that the neither the plaintiff, nor the second defendant/appellant could have any right in the properties given to the first defendant by his paternal aunt, Sivapakiathammal. He also held that in the property in house No.36, the rice mill and the colony of houses in the South Street, Thirunallar which were acquired under Exs.B-1 to B-4 by the first defendant, the plaintiff and the second defendant can have no share. As far as the properties standing in the name of the plaintiff are concerned, learned trial Judge held that the properties were given in favour of he plaintiff by the testament of Raja Kannu Achi. He also relied upon Ex.A-12, release deed and held that neither the first defendant, nor the second defendant could claim any share in the properties given to the plaintiff under Ex.A-10. He held that the first item of the plaint B-schedule properties was available for partition and the second item had already been sold. He held that the C-schedule properties of the plaint are personal properties of the

first defendant. In so far as the properties described in the written statements filed by the first and second defendants are concerned, learned Judge held that A and B schedule properties are individual properties of the plaintiff and the first defendant and therefore, the second defendant could not claim any share in those properties. In so far as the movable properties which are described in C-1 schedule to the written statement are concerned, the trial Judge held that the plaintiff and the defendants 1 and 2 would be entitled to 1/3rd share each which would be ascertained at the time of passing of the final decree. He also held that the plaintiff has not received any amount from the jointly owned properties. He held that the plaintiff is not liable to render any account. He held that the jewellery described in C-schedule to the written statement is not available for partition. In so far as insurance policies are concerned, the trial Judge held that the persons in whose names the insurance policies were taken would be entitled to receive the insurance amount on maturity. As far as the value of the paddy harvested in the year 1976-77 is concerned, learned trial Judge held that neither the plaintiff, nor the second defendant would have any right to claim any share in the paddy harvested by the first defendant in the year 1976-77, as the lease stood in the name of the first defendant and the first defendant alone paid the lease amount to the landlords. In the result, learned trial Judge held that the plaintiff and the defendants 1 and 2 would be entitled to 1/3rd share in A-schedule properties of the plaint and in item No.1 of B-schedule properties of the plaint and in the movable properties described in C-1 schedule to the written statement. The trial Judge also held that the plaintiff and the second defendant are not entitled to any share in the properties described in C-schedule to the plaint and in the house No.36, Thirunallar Road and the parties are not entitled to any share in any other properties. It is against the judgment and decree, the present appeal has been preferred.

11. During the pendency of the appeal, the first respondent/ plaintiff died and his legal representatives were brought on record as respondents 8 to 14. So also, the second respondent/first defendant died pending appeal and his legal representatives were brought on record as respondents 15 to 22.

12. Mr.K.Yamunan, learned counsel appearing for the appellant/ second defendant submitted that the trial Court was not correct in granting the decree for partition in respect of the properties described in A and B schedule to the written statements of the defendants 1 and 2. Learned counsel referred to the averments made in the plaint and submitted that the plaintiff has categorically admitted that there was joint cultivation of the land by the plaintiff and by the defendants 1 and 2 and only by way of joint exertion, the plaintiff and the defendants 1 and 2 purchased the lands in the individual names of the plaintiff and the defendants. He also referred to the averments made in paragraph-6 of the plaint and submitted that the plaintiff and the defendants 1 and 2 were cordial having common mess and the expenses were met from out of the earnings by way of joint exertion. He therefore submitted that when there was joint exertion by the plaintiff and the defendants 1 and 2, the trial Court was not correct in holding that the properties described in the schedule to the written statements filed by the

appellant/second defendant and the first defendant are not joint properties. Learned counsel, in his fairness, brought to the attention of this Court the decision of this Court in MANIAMMAL v. MANGALAKSHMY (1986 I MLJ 160) wherein it was held that the joint family system is not applicable to Pondicherry. He submitted that if the property is acquired by the major son during the Regime De la Co-propriate Familiale, it has got to be presumed that he would not have acquired it out of any independent and separate source of his and the property must have got merged with the family patrimony. He also submitted that the plaintiff in his pleadings has admitted that there was joint exertion and the plaintiff was employed as a Secretary in Thirunallar Municipality on a paltry sum of Rs.40/- per month and he was suspended from service in 1969. He further submitted that the trial Court was not correct in placing reliance on Ex.A-10 to come to the conclusion that the properties described in A and B schedule to the written statements were obtained by the plaintiff from his maternal grandmother, Raja Kannu Achi as Ex.A-10 does not contain any list of the properties. After referring to Ex.A-12, learned counsel submitted that Ex.A-12 does not advance the case of the plaintiff in any manner as there is no mention in Ex.A-12 of the properties bequeathed in favour of the plaintiff. Learned counsel also referred to Ex. B-20 and submitted that neither Ex.A-10, nor A-12, nor B-20 sets out any property bequeathed in favour of the plaintiff. Learned counsel further submitted that house properties bearing Door Nos.37 and 38, North Street, Thirunallar were built by the plaintiff's father, Vaithilingam Pillai during his life time and hence, the house properties should be treated as joint family properties. Learned counsel submitted that the plaintiff was born in 1940 and the buildings in Door No.3 7 and 38, North Street, Thirunallar were put up after 1960 and there is absolutely no evidence of his contribution for the construction of the buildings. He strongly placed reliance on the admission made by the plaintiff in the plaint and submitted that there is no document in favour of the plaintiff and the will does not mention any property and in the partition also there is no mention of properties. He also submitted that there is no evidence of enjoyment. He further submitted that Ex.B-16 clearly shows that the patta was joint. He also referred to the account books and submitted that the accounts were maintained and written by the second defendant for the family. He also submitted that there was no independent income for the plaintiff to purchase the properties in his individual name. He referred to the averments made in the plaint wherein the plaintiff has admitted the joint living and joint enjoyment of properties and submitted that the trial Court should have treated all the properties as joint family properties. He therefore submitted that the judgment of the trial Court holding that the properties standing in the names of the plaintiff and the first defendant are their separate properties is not sustainable on the facts of the case.

13. Mr.T.R.Rajagopalan, learned senior counsel appearing for the first respondent/plaintiff referred to the evidence of the second defendant as D.W.2 and submitted that the second defendant in his chiefexamination admitted that the basic document for the house property at Thirunallar is the testament of the year 1925 executed by the second defendant's maternal grandmother, Raja Kannu Achi. He also referred to the evidence of the second defendant wherein he has stated that except the testament of the year 1925, there is no other document to show his title to

the suit properties. He also referred to the deposition of the second defendant wherein he has stated that the sites in which the houses in Door Nos.37 and 38 were constructed were not purchased by any one of them and the backyard of the houses were purchased by the first defendant and he did not know in whose name the title for the sites in Door Nos.37 and 38 stand. He also referred to the evidence of the second defendant wherein he has stated that he did not give any money for the purchase of the house properties and he did not have the document of title in respect of the house property in North Street, Thirunallar. He also referred to the various portions of the deposition of the second defendant and submitted that his evidence is clear that he has not discharged the burden cast upon him to show that the the properties were purchased out of joint earnings. He submitted that the second defendant has established that there was no ancestral nucleus in the name of the father of the plaintiff and the defendants 1 and 2. As far as joint exertion is concerned, he submitted that the appellant has not established that there was joint exertion out of the which the plaintiff purchased the properties in his own name. He submitted that the claim made for partition has to fail as the appellant has failed to prove that the properties were purchased out of joint income and in the absence of any proof of availability of income from joint exertion, it is not open to the second defendant to claim that the properties standing in the name of the second defendant are available for partition. He further submitted that the admission made in the plaint was only to the effect that out of joint exertion, the properties were purchased jointly and there was no admission to the effect that the properties were purchased in the individual names of the first defendant or the second defendant out of joint exertion. He submitted that on the facts of the case the claim of the plaintiff has to fail as he has admitted that Ex.A-10 is the basic document of title of the properties standing in the name of the plaintiff. As far as pattas are concerned, he submitted that various pattas do not prove the case of the appellant.

14. Mr.K.Chandra Mouli, learned senior counsel submitted that no property was left by the father on his death and according to him, the properties came only under Exs.A-10 and B-20. He submitted that the properties in door No.37 and 38, North Street, Thirunallar came to the hands of the plaintiff under Ex.A-10. He referred to the evidence of D.W.2 and submitted that the father did not gift any property and the properties covered in Exs.A1 to A-6 were alone purchased in the joint names of the plaintiff and the defendants 1 and 2. As far as C-schedule property is concerned, the suit was dismissed and the plaintiff has not filed any appeal as against that finding. He referred to the plaint and submitted that the mother of the first defendant sold C-schedule property to the third defendant during her life time and the finding of the trial Court that C-schedule property belonged to the first defendant and the property was given to the first defendant by Sivapakiathammal under Exs.A-7 and A-8 does not warrant any interference. Learned senior counsel referred to the decision of the Supreme Court in INDRANARAYAN v. ROOP NARAYAN (AIR 1971 SC 1962) and submitted that the appellant has failed to prove that the properties standing in the name of the plaintiff or the first defendant are the joint family properties in which the appellant has a share. He also submitted that since item No.1 of the plaint C-schedule properties was sold during the lifetime of the mother of the

plaintiff, it is not open to the appellant to claim any share in the property.

15. We have carefully considered the submissions of the learned counsel for the appellant and the learned senior counsel for the respondents. The point that arises for consideration in these appeals is "whether the appellant is entitled to claim any share in the properties standing in the individual name of the plaintiff or the first defendant which are set out in the written statement filed by the appellant".

16. As far as applicability of the joint family system in the Union Territory of Pondicherry is concerned, this Court in MANIAMMAL v. MANGALAKSHMY (1986 I MLJ 160) has held as under:-
" As far as Pondicherry is concerned, the law appears to be that during the lifetime of the father, if the father and sons live together that joint living was known as 'Regime de la co-propriate familiale'. After the death of the father, if there is no partition between the sons and if they continued to live jointly that was known as ' Communaute'. The law as obtainable in Pondicherry is stated by Langlard at page 412 of his book Lecons De Driot Hindu. The characteristic feature of Hindu family, which remained undivided, is that there exists unity in residence and joint interest. Therefore, the joint family system was not applicable to Pondicherry."

The law laid down by this Court is that under the Hindu Law as it is in force in Pondicherry, Hindu sons do not acquire any interest in the father's property by birth whether the property be the selfacquired property of the father or his ancestral property. The French Writer Sannar in his work on Hindu law observed as under:-
" 'Today, by virtue of a more correct interpretation of custom, the theory of coparcenary system between father and sons in respect of the ancestral properties is abandoned in our establishment of Coramandal Coast. It is to the head of the family only, in reality, in the juridical sense of the word, the assets deriving from ancestor belong and he alone has capacity to exercise. In principle the right to dispose, which is conferred on him by owner's right'. It is this principle of law which indisputably governs the right of the parties. It is thus clear that the plaintiff's father was the absolute owner of the properties."

17. The Court also held that the properties donated to the son by other persons become personal properties of the son and the properties acquired by the son from his own income through separate industry, commerce or business can become personal properties of the son if it is proved that his income was never gathered or integrated with the income of the family. Applying the principles laid down by this Court in the decision cited supra, the plaintiff in his evidence has denied that the properties mentioned in the written statements of the defendants 1 and 2 are available for partition which must be divided among the plaintiff and the defendants 1 and 2 equally. So far as the second defendant is concerned, the stand taken by him in the written statement was that the plaintiff was the manager of the joint family and the plaintiff was the de-jure and de-facto manager of the family and he was the custodian of the properties belonging to the family, and according to him, the properties standing in the name of the plaintiff and the first

defendant actually belong to the joint family available for partition. The case of the second defendant throughout was that there was a joint family, and

as far as the Union Territory of Pondicherry is concerned, we have already held that the system of joint family is not in vogue in the Union Territory of Pondicherry.

18. The submission of Mr.Yamunan, learned counsel is that the plaintiff in his plaint has admitted that there was joint exertion in the cultivation of lands and there was joint living and common existence. Learned counsel also referred to the evidence of the plaintiff as P.W.1 wherein he has stated that after the death of the father the plaintiff and his brothers were living in separate houses, having separate mess, and submitted that his evidence is contrary to the pleadings. He therefore submitted that since the joint exertion has been admitted, the properties standing in the names of the plaintiff and the first defendant should be treated as joint family properties. As far as the pleadings are concerned, we find that the plaintiff has stated that there was joint exertion in the cultivation of the lands and out of the money earned by them by joint exertion, the plaintiff and the defendants 1 and 2 purchased the properties in the joint names of the plaintiff and the defendants 1 and 2 from time to time. We are of the view that the admission has to be read as a whole and it is not open to the appellant to rely upon one part of the statement made in the plaint and contend that there was an admission to the effect that the properties standing in the individual names of the plaintiff and the first defendant were also joint family properties of the plaintiff and the defendants 1 and 2. As far as the properties purchased in the name of the plaintiff and the defendants 1 and 2 are concerned, the relevant documentary evidence has been produced in Exs.A1 to A6 and on that basis, the decree for partition has also been granted in favour of the parties. Therefore, the submission of the learned counsel for the appellant that since the plaintiff has admitted joint exertion in the cultivation of the lease-hold lands, the properties standing in the individual names of the plaintiff and the first defendant should be taken as joint family properties is not acceptable, especially when the second defendant himself, in his evidence, admitted that he is not claiming any share in the properties standing in the name of the first defendant.

19. Mr.Yamunan, learned counsel referred to the contradiction in the evidence of P.W.1 and submitted that the evidence is contrary to the allegations made in the plaint and there is no evidence to show that the parties were living separately at any point of time. The plaintiff has stated that the brothers were living separately having separate mess and separate residence, though in one place he has stated that the separate living started after his father's death and in another place he has stated that they were living in the same house, but with separate mess. The question of joint living does not assume importance as the appellant has failed to prove that the properties standing in the name of the defendants 1 and 2 are joint properties of the plaintiff and the defendants 1 and 2.

20. In NARAYANA RAO v. VENKATAKRISHNA RAO (XXVII MLJ 677) it

was held as under:-
" Under the Hindu Law mere living together of the members of a family will not make them joint owners of properties acquired by each individual member. There must have been a nucleus of ancestral property which was utilised for the purpose of making the subsequent acquisitions or the members must have thrown their joint earnings into hotchpot with the intention of giving up their individual rights in them."

Moreover, we have already held that so far as the Union Territory of Pondicherry is concerned, the system of joint family as it is prevalent in other parts of the country is not applicable. The appellant has also not proved that there was income of the family and with that source, the properties standing in the name of the plaintiff were purchased.

21. Mr.K.Yamunan, learned counsel submitted that in the testament of the year 1925 executed by Raja Kannu Achi (Ex.A-10), there is no mention of the property what was given to the plaintiff. He has also referred to Ex.A-12, the deed of release by the daughters of Raja Kannu Achi and submitted that the deed of release also does not help the plaintiff in any manner as there is no mention of the property allotted to the plaintiff in the testamentary disposition made by Raja Kannu Achi. According to him, there is no list of properties appended to Exs.A-10 and A-12 which were given to the plaintiff. Learned counsel also referred to Ex.B-20 and submitted that even in the document the properties that were given to the plaintiff were not mentioned and there is no evidence to show that the plaintiff had obtained the properties by the testamentary disposition made by Raja Kannu Achi. We are unable to accept the submission of the learned counsel for the appellant. Though there is no list of properties appended to the testament dated 5.3.1925 executed by Raja Kannu Achi, it is clear from the reading of the document as a whole that Raja Kannu Achi had given some of her properties in favour of her daughters and the plaintiff was made the universal legatee under the will. In the said deed Raja Kannu Achi has stated that she donated both movable and immovable properties including the agricultural and non-agricultural lands situate at Thirunallar, house and plots, well, etc. to the plaintiff. In the other document, Ex.B-20 there is also a clue to the extent of the properties donated by Raja Kannu Achi as the document states that she has stated that she had dry land and other lands at Thirunallar which were bequeathed in favour of the plaintiff. The deed of release is important in the sense that it indicates that Raja Kannu Achi had extensive properties and the plaintiff was given the properties referred to in the testamentary disposition dated 5.3.1925 in which he was appointed as the universal legatee, and he has been in possession and enjoyment of the same. Moreover, the appellant/second defendant himself in his chief examination has admitted that the basic document for the properties is the testament of the year 1925 executed by his maternal grandmother, Raja Kannu Achi. Though Mr.Yamunan, learned counsel submitted that it would not amount to an admission, the second defendant in his cross-examination has admitted that except the document of the year 1925 of Raja Kannu Achi there are no other documents to show title to the suit properties. Hence, we are of the view that merely because the list of properties is not appended to Ex.A-10 it cannot be held that the plaintiff did n ot obtain the properties mentioned in the list annexed to the written

statement filed by the appellant. The second defendant has also stated that the sites were not purchased by anyone of the brothers and he has not having any document of title in respect of the house at North Street, Thirunallar. Hence, we are not unable to accept the submission of Mr.Yamunan, learned counsel that there is no correlation to the properties standing in the name of the plaintiff with the properties obtained by the plaintiff under Ex.A-10.

22. As far as the evidence of enjoyment is concerned, the plaintiff in his own evidence has stated that he has been in enjoyment of the properties obtained from his maternal grandmother, Raja Kannu Achi and he has also stated that he constructed the house in the vacant site and the house was leased to Indian Overseas bank and one other tenant to run a hotel and we hold that the plaintiff had separate earnings and the plaintiff has established his enjoyment of the properties. He has also denied that the sites over which the buildings were constructed were purchased by the first defendant and there is no acceptable evidence contrary to his evidence. It is also relevant to notice that the paternal aunt of the plaintiff, by name, Sivapakiathammal had given certain lands to the first defendant and his brother Appasamy and his maternal grandmother had willed away her properties to the plaintiff. As we have already observed that so long as there is no evidence to show that out of the income earned by joint exertion, the properties were purchased by the plaintiff in his individual name, it must be held that the properties standing in the name of the plaintiff are his separate properties.

23. Mr.Yamunan, learned counsel also referred to the fact that Ex. B-16 and B-17 and submitted that the pattas are standing in the joint names of the plaintiff and the defendants 1 and 2. The second defendant has failed to explain the circumstances under which the pattas were issued in the joint names of the plaintiff and the defendants 1 and 2, when the second defendant relies upon the pattas, it is for him to establish by cogent evidence the circumstances under which the joint pattas were issued in favour of the plaintiff and the defendants 1 and 2. We find that when the plaintiff

was cross-examined, he was not questioned with reference to the joint pattas and the appellant has also not deposed regarding the joint pattas. Further,the pattas are not documents of title.

24. Learned counsel for the appellant referred to the evidence of the plaintiff wherein he has stated that his salary at the time of his retirement was Rs.228/- and his initial salary was Rs.60/- per month. He also referred to the evidence of D.W.2 wherein he has stated that the plaintiff had four daughters and two sons and three daughters and one son were married and the expenditure of the marriage was met from out of the income from the properties standing in the joint names of the defendants 1 and 2 and from the income from the properties standing in his individual name. He therefore submitted that the plaintiff had no substantial income and hence, the properties standing in his name were purchased only from the income out of joint exertion and are available for partition. we are not able to accept the submission of Mr.Yamunan, learned counsel for the appellant as the appellant, when he was examined as D.W.2, has categorically admitted that the basic

document for the house property is said to be the testament of the year 1925 executed by his maternal grandmother, Raja Kannu Achi. He has also stated, in his cross-examination, that except the testament of the year 1925 executed by Raja Kannu Achi, there is no other document to show the title to the properties. He has stated that he did not know the survey number of the sites over which the buildings in door Nos.36,37 and 38 were constructed. He has clearly admitted that the sites over which the house Nos.37 and 38 were constructed were not purchased by and one of the brothers and the backyard of the houses was purchased by the first defendant. He has also admitted that he did not know in whose name the title for the sites on which the buildings in door Nos.37 and 38 stand. He has also stated that he has not given any money for the purchase of the house as he was aged 10 years at that time and he did not have the document of title in respect of the purchase of the house in North Street, Thirunallar. He has also stated that he did not give any cash to the plaintiff for the purchase of the house in North Street, Thirunallar. He has stated that he did not know that the house in Door No.37 was reconstructed by the plaintiff. He has stated that the plaintiff was a trustee of Thirunallar temple and he has denied the suggestion that the plaintiff had undertaken contract works and earned money. He has stated that since he was a Government servant, he could not do any contract work. The evidence of D.W.2 is relevant to show that the second defendant did not know even the date of purchase of the properties and he did not know anything about the title of the sites in which the buildings stand. When the second defendant claims partition over the properties, it is for him to produce relevant documents of title to show in whose names the properties stand and he must also establish that though the properties are standing in the name of the plaintiff, they were purchased out of the joint income of the plaintiff and the defendants 1 and 2. On the other hand, he has admitted in his evidence that the basic document of title to the properties is the testament of the year 1925 executed by Raja Kannu Achi in favour of the plaintiff and except this document, there are no other documents of title to the properties. When the appellant has admitted the source of title as the testamentary disposition in favour of the plaintiff, the claim of the appellant that the properties standing in the name of the plaintiff are liable for partition is not acceptable. Since the second defendant claims that the properties standing in the name of the plaintiff are also joint family properties, it is for him to establish the nucleus of the joint family and the income of the joint family properties and also to prove that out of the surplus joint family income the properties standing in the name of the plaintiff were purchased. In other words, there must be a link between the purchase of the properties in the name of the plaintiff and the availability of income in the hands of the joint family. The first defendant has not even given the particulars as to the extent of the lands taken on lease and the amount of income which the plaintiff and the defendants earned as lessees and also proved that there was any surplus income in the joint family which was available with the plaintiff to purchase the properties standing in his name and the date of purchase of the properties. On the other hand, his evidence is that he did not know the survey number of the sites over which the buildings were constructed. He has also admitted that the source of title would be the testamentary disposition of Raja Kannu Achi in favour of the plaintiff in the year 1925. He has also stated that he was aged 10, at the time of purchase of the house property and

he did not give any money for the purchase of the house property. It is relevant to notice the decision of this Court in RAMAKRISHNA v. VISHNUMOORTHI (AIR 1957 Mad. 86) wherein it was held as under:-

" The proposition of law is well established that it is not enough to show that the family had a nucleus of the family property in order that the later acquisitions made by the manager of the family should have the attribute of family character but what is necessary is that the nucleus must be such as to leave sufficient income therefrom after meeting the expenses as would enable the manager to acquire properties with that". .... "The learned Subordinate Judge was of the view that when once the ancestral nucleus is admitted the onus lies on the manager of the joint Hindu family to prove that the properties acquired were his self acquisitions. This is stating the proposition of law in very wide terms. The existence of a nucleus is not the sole criterion to impress the subsequent acquisitions with family character. What has to be shown is that the family had as a result of the nucleus sufficient surplus income from which the subsequent acquisitions could be made."

25. We have seen the evidence of the second defendant and the appellant/second defendant has failed to produce any evidence to show that the properties standing in the name of the plaintiff were purchased out of the joint income of the plaintiff and the defendants 1 and 2. We have already made an observation that the appellant has even failed to produce the documents of title relating to the properties and it is not as if that the documents are not attainable or cannot be obtained. There is no evidence from the second defendant to the effect that the documents of title could not be obtained and in the absence of any connection between the income earned from the lease-hold lands and the properties standing in the name of the plaintiff or the first defendant, we hold that those properties are not joint properties of the plaintiff and the defendants 1 and 2. Moreover, as rightly submitted by Mr.T.R.Rajagopalan, learned senior counsel appearing for the first respondent/plaintiff, the case pleaded by the appellant was that there was a joint family which was not established and when the plea of joint family was not established, the entire case of the appellant has to fail.

26. As far as the account books are concerned, the case of the appellant has to fail as he has not produced any supporting document to corroborate the entries made in the account books and the person who had written the account books was also not examined. Further, there is absolutely no evidence to show that the plaintiff had written the account books. There are also no evidence to show that those books were verified by any independent statutory authority, nor they have been produced before any statutory authority. There is also no seal or initial of any statutory authority. We are of the view that the entries found in the account books are not conclusive to show that the plaintiff has purchased the properties standing in his name from out of the joint earnings of the plaintiff and the defendants 1 and 2. We hold that the trial Court has correctly held that no reliance can be placed on the account books produced by the appellant.

27. We therefore hold that the appellant/second defendant has failed to establish that the properties standing in the name of the plaintiff

or the first defendant actually belong to the joint family, available for partition. It is well settled by the decision of the Supreme Court in MUDIGOWDA v. RAMCHANDRA (AIR 1969 SC 1076) that there is no presumption that the burden of proving that any particular property is joint family property is in the first instance upon the person who claims it as joint family property. The Court also held that it is only after the possession of an adequate nucleus is shown, the onus would shift on to the person who claims the property as selfacquisition to affirmatively make out that the property was acquired without any aid from the family estate. On the facts of the case, we find that the second defendant has failed to establish the extent of the lands which were jointly taken on lease by the plaintiff and the defendants 1 and 2 and the income earned by them out of joint exertion as lessees and the availability of surplus money in the hands of all the three brothers after meeting all the expenses at the time of purchase of the properties standing in the name of the plaintiff. The second defendant has not produced any document of title of the properties standing in the name of the plaintiff. There is no evidence also to show that the joint exertion has yielded any surplus income which were utilised for the purchase of the properties standing in the name of the plaintiff. The fact that the properties were purchased jointly as seen from Exs.A-1 and A-6 would show that out of the income of the joint exertion those properties were purchased and other properties are not jointly owned properties of the parties. Further, the plaintiff has also established the source for the acquisition of the properties standing in his name by producing the testamentary disposition made by Raja Kannu Achi under Ex.A-10 in the year 1925. When the appellant/second defendant has admitted that the source of title is the testamentary disposition made by Raja Kannu Achi and in the absence of any evidence to show any other source for the purchase of the properties standing in the name of the plaintiff, we hold that the trial Court was correct in holding that the properties standing either in the name of the plaintiff or in the name of the first defendant which are shown in the list annexed to the written statements filed by them are not available for partition. Learned counsel for the appellant has not addressed any other argument on other points. Accordingly, the appeal fails and the same is dismissed. In view of the close relationship between the parties, there will be no order as to costs.

Index: Yes

Website: Yes

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To

The Additional District Judge,
Pondicherry at Karaikkal.